

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
March 15, 2005
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Labor Negotiator

(Pursuant to Government Code Section 54957.6)

Agency designated representative: Charles Lawson and Cherie Rosenquist

Employee Organizations: Protech, MEA, MSA, LIUNA, MPOA, IAFF, and Unrepresented employees

2. Conference with Real Property Negotiators

(Pursuant to Government Code Section 54956.8)

Property: Calvary Assembly of God - APN Nos. 092-37-044, 045 and 046

Agency negotiators: Mike McNeely and Greg Armendariz

Negotiating Parties: City of Milpitas and Calvary Assembly of God Church

Under Negotiation: Terms and Conditions for Acquisition of Property

3. Conference with Legal Counsel - Anticipated Litigation

Initiation of litigation pursuant to subdivision (c) of Government Code Section 54956.9

Number of cases: (1)

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES (None)

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamation:

- **Colorectal Cancer Awareness Month**

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS

- 1. Introduce Ordinance No. 124.37 Amending Title XI, Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning, and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance the Code Enforcement Program (P-ZT2004-2) (Staff Contact: Tambri Heyden, 586-3280)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (None)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)

RA6. Public Arts Policy Funding Recommendations (Staff Contact: Emma Karlen, 586-3145)

***RA7. Approve Authorization to Enter into Negotiations with Fairfield Development L.P. for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

RA8. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- 2. Presentation by Wildlife Center of Silicon Valley on Wildlife Rehabilitation and Education: Mayor Esteves**

*** 3. Approve Authorization for Letters from the Mayor Expressing City of Milpitas Opposition to the Proposed HUD Community Development Block Grant (CDBG) Program Cuts in the Proposed Federal Budget: Mayor Esteves**

- 4. Library JPA Parcel Tax Ballot Measure: Consider Support Resolution: Councilmember Polanski (Staff Contact: Cindy Maxwell, 586-3282)**

Economic Development Commission

- 5. Milpitas Chamber of Commerce Location Needs: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)**

Arts Commission

- * 6. Review and Approve the Arts Commission's 2005 Work Plan (Staff Contact: Kathleen Yurchak, 586-3209)

XVII. UNFINISHED BUSINESS

- 7. Status Report on Outreach Program to Encourage Residents to Submit Community Service Applications for City Commissions (Staff Contact: Charles Lawson, 586-3051)
- 8. Review and Approve Ethics Project Final Report, Recommendations, and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)

XVIII. NEW BUSINESS

- 9. Receive Report on Anticipated General Plan Amendments (Staff Contact: James Lindsay, 586-3274)
- 10. Receive Report on Water Resources Protection Collaborative Efforts Among Santa Clara County, Cities, and the Santa Clara Valley Water District (Staff Contact: Mike McNeely 586-3301 and Tambri Heyden 586-3280)
- 11. Approve Concept Design for the Interpretive Historical Display for the O'Toole Elms (Staff Contact: Troy Fujimoto, 586-3287)
- * 12. Approve Site and Architectural Approval Amendment No. SA2004-123 for Site Modifications at 1594 Pebble Beach Court (Staff Contact: Staci Pereira, 586-3278)
- * 13. Authorize the Mayor to Send a Letter to The Honorable Mike Honda Supporting Additional Funding for Berryessa Creek Project (Staff Contact: Mehdi Khaila, 586-3328)
- * 14. Approval of the Interlocal Agreement Related to the 2005 Edward Byrne Justice Assistance Grant (JAG) Program Award (Staff Contact: Dennis Graham, 586-2502)
- * 15. Request for Captain Paul Inouye, Hazardous Materials Inspector, to Accept an Invitation from the Northern California Fire Prevention Officers Association for Paid Attendance to The Uniform Fire Code Association Annual Training Conference in Las Vegas Nevada (Staff Contact: Patti Joki, 586-3370)

XIX. ORDINANCES

- 16. Adopt a Resolution Authorizing the Community Advisory Commission Chair to Appoint a Three-member Animal Regulation Appeal Board and Introduce Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I of the Milpitas Municipal Code to Provide that Notices of Appeal to the City Council Shall Only be Effective Upon Timely Receipt of Payment of the Fee Adopted or Amended by Resolution of the City Council (Staff Contacts: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)
- * 17. Adopt Ordinance No. 262.1 (1) repealing Chapter 310 of the Municipal Code; (2) repealing Chapter 320 of the Municipal Code; and (3) introducing Ordinance 262.1, Adding Chapter 310 to Title I of the Milpitas Municipal Code Establishing Regulations Governing Access to Public Meetings and Public Records, Designating

City Employee Salary Information by Title as a Public Record, Regulating Lobbyists' Activities and Solicitation of Donations by Public Officials and Establishing an Open Government Commission ("Milpitas Open Government Ordinance") (Staff Contact: Steve Mattas, 586-3040)

XX. RESOLUTIONS

- 18. Adopt Resolution Amending the City of Milpitas Classification Plan (Staff Contact: Cherie Rosenquist, 586-3082)**
- * 19. Adopt Resolution of Local Support for SB 680 (Staff Contact: Greg Armendariz, 586-3317)**
- * 20. Adopt Resolution Granting Initial Acceptance: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery, Project No. 4214, (Staff Contact, Doug De Vries 586-3313)**
- * 21. Adopt Resolution Granting Initial Acceptance: 2004 Street Resurfacing Project, Project Nos. 4182/4223, (Staff Contact D. De Vries, 586-3313)**

XXI. BIDS AND CONTRACTS

- * 22. Authorize the City Manager to Execute Agreement with Quint & Thimmig LLP for Legal Services related to the Formation of a Community Facilities District (Staff Contact: Emma Karlen, 586-3145)**
- * 23. Authorize the City Manager to Execute Agreement Amendment; GSS Consulting; Various Capital Improvement Projects (Staff Contact: Mark Rogge, 586-3403)**
- * 24. Authorize City Manager to Execute Consultant Agreement; Hill Associates; Coyote Creek Trail, Reach 1, Project 4206 (Staff Contact: Greg Armendariz, 586-3401)**
- * 25. Authorize a Contract with Ashron Construction & Restoration, Inc. to Perform Grout Injection on the Mechanic's Pit at Fire Station No. 1 (Staff Contact: Chris Schroeder, 586-3161)**
- * 26. Approve Agreement Amendment with Krost & Associates (Staff Contact: Carmen Valdez, 586-3086)**
- * 27. Approve Contract Change Order: Singley Area Street Rehabilitation, Phase III, Project No. 4200; Street Resurfacing, Project No. 4182 (Hamilton Area); Marylinn Drive sidewalk, Project No. 4222; and Sports Center Master Plan Improvement, Phase I, Project No. 8149 (Alley Way), (Staff Contact: Doug De Vries, 586-3313)**
- * 28. Approve Change Order: South Bay Water Recycling Program (SBWRP) Infill Phase M-2, M-3 (Project No. 6093) Staff Contact: Doug De Vries 586-3313)**
- * 29. Award Bid for Purchase of Ammunition (Staff Contact: Chris Schroeder, 586-3161)**
- * 30. Award Bid for Aquatic Eco Systems Aeration System (Staff Contact: Jeff Leung, 586-3326)**

XXII. CLAIMS AND DEMANDS

- * 31. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 5, 2005, AT 7:00 P.M.**

B E C O M E A C I T Y C O M M I S S I O N E R !

Currently, there are openings on the following City Commissions:

- ▶ **Bicycle Transportation Advisory Commission**
- ▶ **Citizens Emergency Preparedness Advisory Commission**
- ▶ **Community Advisory Commission**
- ▶ **Economic Development Commission**
- ▶ **Mobile Home Rental Review Board**
- ▶ **Parks, Recreation, and Cultural Resources Commission**
- ▶ **Recycling and Source Reduction Advisory Commission**
- ▶ **Youth Advisory Commission**

Applications are available online at www.ci.milpitas.ca.gov or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

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Agenda Reports
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XIV. PUBLIC HEARINGS

- 1. Introduce Ordinance No. 124.37 Amending Title XI, Chapter 30 (Signs), Amending Title XI-10 (Planning, Zoning, and Annexation) and Amending Chapter V-500 (Neighborhood Beautification) of the Municipal Code to Enhance the Code Enforcement Program (P-ZT2004-2) (Staff Contact: Tambri Heyden, 486-3280)**

Background:

City Council Actions

At the May 18, 2004, Council Meeting, the Council approved a proposal to expand the City's code enforcement program by proceeding with amendments to the Neighborhood Beautification, Sign and Zoning Ordinances. The amendments were intended to reduce notification timeframes, add administrative citations to the sign code, enable fines without notice for certain violations and require temporary sign registration.

On December 21, 2004, the City Council considered the first reading of the amendments to these ordinances and directed staff to return to the Council in 90 days after achieving greater consensus for the amendments from the Sign Code Task Force. The Council also directed that, upon return of the amendments, the proposal to transition to proactive code enforcement not be included and be delayed to some future date.

Sign Code Task Force

A Sign Code Task Force was established by the City Council on October 5, 2004. The task force met six times during 2004 and on January 7, 2005, January 21, 2005 and February 4, 2005 with the last meeting chaired by Councilmember Gomez. Although not all individuals who have attended one or more meetings of the task force were present at these meetings, those individuals present, with the exception of one abstention, unanimously concluded that the proposed ordinance presented to the Planning Commission and City Council in December amending the Sign Ordinance, Zoning Ordinance and Neighborhood Beautification Ordinance (NBO) is acceptable, as it stands, with some changes relating to definitions, enforcements remedies, limitations on fines, a 6-month delay before administrative citation authority takes effect, a courtesy notice and educational outreach program, and continuation of quarterly task force meetings for one year (please see Council Background Report for more details).

Planning Commission and Economic Development Commission

On February 9, 2005, the Planning Commission, by a 6 to 1 vote, recommended that the City Council adopt Ordinance 124.27. On February 14, 2005, the Economic Development Commission unanimously recommended that the City Council adopt the ordinance as well.

Environmental Review: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the ordinance text amendments may have a significant effect on the environment. The proposed text amendments will reorganize and clarify the Sign Ordinance, address violations in the Sign Ordinance and NBO and provide for Administrative Citation authority in the Zoning Ordinance. These changes will not have

a significant effect on the environment.

Recommendation:

1. Close the public hearing.
2. Waive reading beyond title.
3. Introduce Ordinance No. 124.27.
4. Authorize proposed outreach program and continuation of quarterly task force meeting, for one year after adoption of the ordinance.
5. Authorize proceedings with updating the political sign section of the sign code, including adding a provision limiting the maximum aggregate area of political signs per candidate on a parcel.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (None)

RA4. Approval of Agenda and Consent Calendar

RA5. Receive Progress Report on Library Design (Project No. 8162) (Staff Contact: Mark Rogge, 586-3403)

Background: The library project is currently proceeding with the schematic design phase. The project is included in the Capital Improvement Program. Staff will give a brief presentation on the progress of the design at the Joint Redevelopment Agency and City Council Meeting.

Recommendation: Note receipt and file the progress report on the library design.

RA6. Public Arts Policy Funding Recommendations (Staff Contact: Emma Karlen, 586-3145)

Background: On February 15, 2005, staff proposed refinement to the funding of public arts policy and received direction from the City Council to meet with the CIP Subcommittee, Arts Commission and Finance Subcommittee for recommendations on the application of 1.5% formula and provide a better definition for the eligible CIP projects.

Staff has met with all three of the committees and commission and received recommendations from each one. The minutes from each meeting are included in the agenda packet. All three subcommittees/commission agreed to the following:

1. The 1.5% formula would apply to major public building or infrastructure projects that are funded by the City or Redevelopment Agency. Examples of these types of projects are Library, Parking garages, Senior Center, Sports Center parking circulation, midtown infrastructure, and BART.
2. The 1.5% formula would apply to the actual CIP expenditures of prior year instead of the CIP budget for the current fiscal year. In addition to providing more accurate accounting, using actual CIP expenditures will avoid double counting when a project is defunded and the remaining money is re-appropriated to another project.
3. The 1.5% formula would apply to all phases of a CIP project including site clearance, design, project administration and construction except property acquisition.

4. The 1.5% formula would not apply to projects that have restricted funding sources. Examples of restricted funding sources are projects that are funded by utility funds, grants, park fees paid by developers that are for specified projects, and gas tax allocated by the State.

The responsibility of maintenance of public arts was discussed during the Arts Commission meeting. The Arts Commission agreed that the Public Arts Fund would provide for maintenance of public arts that require special care and that the Public Art Committee would include any necessary maintenance in their annual plan. It is further understood by staff that major public buildings and infrastructures projects would not include projects that are repair and maintenance in nature. Examples of repair and maintenance projects are annual sidewalk replacement, traffic signal modifications, street resurfacing, building repairs and equipment replacement. In presenting the Annual CIP budget to the City Council, staff would clearly note in the CIP budget document the eligibility of each project for the 1.5% formula application.

The Finance Subcommittee suggested placing a minimum threshold such as \$1 million on a CIP project in order for it to be eligible for the 1.5% formula application.

If the City Council accepts these recommendations, a Public Arts Ordinance incorporating these recommendations will be brought back for Council's adoption in April.

Recommendation: Accept the Public Arts Policy funding recommendations and provide direction on placing a \$1 million minimum threshold on the CIP project in applying the 1.5% formula.

***RA7. Approve Authorization to Enter into Negotiations with Fairfield Development L.P. for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**

Background: Fairfield Development L.P., San Diego, California is proposing to develop a 4-story residential project at the Donovan property, adjacent to Great Mall Parkway, with approximately 480 residential units. Staff has met with the developer and both parties are in agreement to provide approximately 96 affordable housing units with financial assistance from the agency. The final details of the agreement will be presented to the City Council for approval at a later date. It is recommended that the Agency authorize staff to enter into negotiations with Fairfield Development for the purpose of providing financial assistance from the Agency's 20% Affordable Housing Set-Aside funds. The Agency's authorization to enter into negotiations should not be considered implied approval for any of the forms of assistance requested by the developer. Any agreement negotiated is subject to the Agency/Council review and approval.

Recommendation: Approve authorization to enter into negotiations with Fairfield Development L.P. to provide Agency Finance Assistance from its 20% Affordable Housing Set-Aside funds.

RA8. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

2. Presentation by Wildlife Center of Silicon Valley on Wildlife Rehabilitation and Education: Mayor Esteves

Background: The Wildlife Center of Silicon Valley has asked to make a presentation to the Council on its 2004 activities in Milpitas and to share plans for 2005 in an effort to broaden their services to Milpitas.

Recommendation: Receive presentation.

- * 3. **Approve Authorization for Letters from the Mayor Expressing City of Milpitas Opposition to the Proposed HUD Community Development Block Grant (CDBG) Program Cuts in the Proposed Federal Budget (Staff Contact: Felix Reliford, 586-3071)**

Background: Last month, the Bush Administration presented its proposed Federal Budget to the United State Congress. Part of the proposed budget included the elimination of the Community Development Block Grant (CDBG) Program and placing the program with what he calls “Strengthening America’s Communities Initiative” which would combine 18 Federal Government direct grant programs into one within the Economic Development Administration (EDA). The EDA is located within the Department of Commerce. The new program proposed funding is \$3.71 billion, which is approximately \$1 billion less than the current CDBG program.

The CDBG Program is the centerpiece of the Federal Government efforts to help states and localities meet the needs of low and moderate-income communities. CDBG funds are vital to housing rehabilitation, supportive services, public improvements and economic development projects in communities across the country. The program currently serves over 1,100 entitlement communities, urban counties and states and more than 3,000 rural communities. CDBG continues to be one of the most effective Federal domestic programs to help revitalize neighborhoods with proven results.

Since becoming a CDBG entitlement city in 1997, City of Milpitas has received approximately over \$5 million to assist low and moderate income individuals and households in a variety of services including, homelessness, domestic violence, fair housing, shared housing, substance abuse, emergency food, free legal services, youth crisis response and intervention curb cuts and ramps for disabled persons and seniors and housing rehabilitation.

Most cities in the Bay Area and across the country are expressing their opposition to the proposed budget cuts with a letter to the US Senate and House Representatives, which must approve the proposed budget submitted by the Bush Administration. Mayor Esteves has expressed a desire for the City Council to support a letter of opposition to the proposed budget cuts in the CDBG Program.

Included in the Council’s agenda packet is a letter prepared by staff expressing the City of Milpitas opposition to this proposed elimination of the CDBG Program.

Recommendation: Approve the authorization of the Mayor’s signature expressing the opposition to the proposed elimination of the Community Development Block Grant Program being proposed by the Bush Administration.

- 4. **Library JPA Parcel Tax Ballot Measure: Consider Support Resolution: Councilmember Polanski (Staff Contact: Cindy Maxwell, 586-3282)**

Background: This item is continued from the February 15, 2005, Council meeting so the discussion can occur after the March 8, 2005, school district ballot measure. On January 27, 2005, the Santa Clara County Library Joint Powers Agency (JPA) placed two measures on the May 2005 special election relating to library funding. The first measure would replace the existing parcel tax with an identical parcel tax for another ten years. The current parcel tax will expire July 1, 2005, and is set at \$33.66 for a single

family parcel. It generates over \$5 million annually or about 20 percent of the JPA's operating budget. The second measure would add another \$12 to the parcel tax and would take effect only if the first measure is approved by the voters. Both measures must have a two-thirds approval by the voters to pass.

As directed by the City Council, a resolution supporting the two ballot measures are included in the agenda packet.

Recommendation: Consider support of Santa Clara County Library District JPA May 2005 tax measures and direct staff accordingly.

Economic Development Commission

5. Milpitas Chamber of Commerce Location Needs: Economic Development Commission (Staff Contact: Cindy Maxwell, 586-3282)

Background: As requested by the City Council, the Economic Development Commission (EDC) formed a Task Force to study the Milpitas Chamber of Commerce's location needs. Task Force members included Don Peoples (EDC) as Chair, Dhaval Brahmhatt (EDC Chairman), Frank DeSmidt (EDC Vice Chair), Dr. Karl Black (EDC and Milpitas Unified Superintendent), Diane McDonough (Chamber President) and Gaye Morando (Chamber Executive Director). The Task Force's report is included as an attachment to the mailed Council agenda and will be reviewed by the EDC on Monday, March 14. An update on the report will be provided at the City Council meeting.

Recommendation: Receive the report of the Task Force and direct staff as appropriate.

Arts Commission

*** 6. Review and Approve the Arts Commission's 2005 Work Plan (Staff Contact: Kathleen Yurchak, 586-3209 and Arts Commission Chair Bill Foulk)**

Background: Pursuant to the Arts Commission (AC) Bylaws, the Arts Commission serves as an advisory body to the City Council on matters pertaining to the arts. On January 29, 2005, the Arts Commission held a Workshop facilitated by Cheryl Mann, Founder/Certified Business & Life Coach of Goals InSight Coaching. During the Workshop the Commission developed their 2005 goals and action plan. The Commission reviewed and approved their 2005 goals and action plan at their February 28, 2005, Commission meeting and finalized their Mission Statement; The Milpitas Arts Commission, in order to enhance the quality of life in its community, shall promote, provide and encourage the arts in the City of Milpitas. The following proposed Work Plan encompasses the Commission's vision, values, mission statement, goals and action plan for 2005.

Goal	Complete By	Action Required	Responsible
Acquire money as stated in draft Public Art Policy through approval by City Council and adoption of Ordinance	In process	Acquire monies for the Arts through lobbying to Community, Council and Art Groups	Commissioner's Butler, Ogle, Hays, Foulk to work with City Manager and City Council
Pursue Grant Writing; Fundraising; Sponsorships	Ongoing	Develop monetary number to set as target goal	Commissioner McGuire, Lorentzen-Staff

Promote Center for the Performing Arts	Ongoing	Visit Planning and Library Commission and add as Subcommittee Item to Agenda	All Commissioners
Consult on City Projects containing Art Elements	Ongoing	Approach the Milpitas POST on Article highlighting the Commission and what they do. Visit other Commissions and express interest in all	Commissioner McGuire, Milpitas POST
Recruitment of Phantom Art Gallery Artist	March 05	Press Release to POST and local Art Publication; distribute PAG Promotional Materials; add Application to Website	Commissioner Hicks, Lorentzen- Staff

Recommendation: Approve the Arts Commission's Work Plan.

XVII. UNFINISHED BUSINESS

7. Status Report on Outreach Program to Encourage Residents to Submit Community Service Applications for City Commissions (Staff Contact: Charles Lawson, 586-3051)

Background: At the March 1, 2005, City Council meeting, the City Council approved a list of outreach suggestions to encourage more residents to apply for appointment to City Commissions. Staff was directed to begin implementing the suggestions, and the City Manager was asked to report back at the March 15, 2005, Council meeting on the progress. A verbal report will be presented at the meeting.

Recommendation: Receive report.

8. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)

Background: The final deliverable under the Ethics Project contract with Dr. Shanks is preparation of a final report that summarizes the first year of the project, assesses its success and makes recommendations for improvements. This final report, titled "Sustaining *Ethics First!*: A Three-Year Plan for Leadership and Public Trust", dated February 22, 2005, is included in the Council's agenda materials. The report has been edited by the City's project manager for format and typographical errors only and as with past major deliverables, has been reviewed by the Ethics Steering Committee and the Community Advisory Commission.

The report contains seven recommendations and three goals for building leadership and public trust over the next two years. The seven recommendations are as follows:

1. Extend the time the Council spends sharing its decision reasoning with citizens, utilizing the pocket card. (The pocket card was distributed at the first Council training session.)
2. Hold an additional training session for the Commissioners who did not attend one of the training sessions and every effort should be made to gain signatures from 100% of the Council, Commissioners and senior staff who have not signed the Code of Ethics.
3. Take advantage of the Ethics Consultant's pro bono offer to design and/or facilitate the next two Council meeting moments of reflection.

4. Direct the City Attorney to add language to the new Open Government Ordinance to strengthen the lobbyist section.
5. Establish a permanent oversight committee to guide the Ethics Program. The committee should be comprised of six Community Advisory Commission members and three staff members – the Director of Planning and Neighborhood Services, the Human Resources Director and the Information Technology Director. Further, the Program should be resumed this current year.
6. Give the Lead Ethics Evaluator staff support, besides the current assistance from the City Clerk, such as from the Assistant City Attorney, to attend the ethics hearings and assemble non-partisan background pieces and statements of fact. Empower and remunerate the Lead Evaluator to work with parties involved in a complaint to see if a fair resolution can be reached without having to conduct a hearing.
7. Adopt the Ethics Project Final Report and activities recommended for 2005 and 2006 related to three goals presented to the Council last summer. The goals and associated activities are as follows:

GOAL 1 – Make the Code practical and useful for public officials who are expected to follow it.

2005 ACTIVITIES: a) The Council, Commissioners and senior staff should have three programmatic contacts, one a quarter, two of which would be workshops, the third would be decided by the oversight committee using the City's website for ideas. b) A skills assessment would be conducted prior to the first contact and an evaluation performed at the end of each contact.

2006 ACTIVITIES: a) Hold a Council workshop to building public trust as Council members during an election, b) hold a Candidates workshop, c) assist the League of Women Voters in a Final Word Forum, d) conduct a post-election assessment town hall meeting, and e) make consultant available for guidance to candidates.

GOAL 2 – Make the Code an integral part of the organizational culture, style, and business of the City.

2005 ACTIVITIES: a) Plan a process to build a culture of recognition beginning with the Commissioner recognition dinner. b) Implement the Community Partners Program using the forms developed in 2004. c) Revise the ethics website to make it easier to use and to share ideas and problems. d) Make ethics coaching available to Council members who request it.

2006 ACTIVITIES: a) Engage the Council, Commissioners and senior staff in identifying stumbling blocks and developing skills to overcome them. b) Assess whether the Ethics Code needs updating. c) The City Manager should participate with the oversight committee in plan the programmatic contacts for senior staff referenced in Goal 1, 2005 Activities.

GOAL 3 – Make the Code real in the lived experiences of Milpitas residents.

2005 ACTIVITIES: a) Conduct quarterly ethics program awareness communication to residents. b) Gain assistance and ethics program goals commitment from political consultants, employee unions, newspapers, and the South Bay Labor Council.

2006 ACTIVITIES: a) Plan a full scale public information campaign designed to give voters the skills they need to recognize ethical campaign candidates.

Recommendation: With respect to the recommendation to establish a permanent oversight committee, the oversight committee that has been in place for year one of the Ethics Project is the Ethics Steering Committee which is comprised of three CAC members appointed by the CAC – Craig Ranker, Jenifer Lind and Joselito Abelardo and

five staff members appointed by the City Manager – Tambri Heyden (project manager and Acting Planning and Neighborhood Services Director), Bill Weisgerber (Fire Chief), Mike McNeely (former City Engineer), Bill Marion (Information Technology Director) and Cherie Rosenquist (Human Resources Director) with legal support provided by Assistant City Attorney John Bakker. Both the Steering Committee and the CAC recommend that CAC representatives be appointed by the CAC and staff representatives be appointed by the City Manager, rather specifically designated by name or position. With this caveat, the CAC and Steering Committee recommend the Council approve Dr. Shanks' final report, recommendations and activities for 2005 and 2006.

XVIII. NEW BUSINESS

9. Receive Report on Anticipated General Plan Amendments (Staff Contact: James Lindsay, 586-3274)

Background: Staff is considering a number of City initiated amendments to the General Plan that include changing the land use designation of parcels along Dixon Road and Dempsey Road from Neighborhood Commercial to Mixed-Use and Very-High Density Residential to implement Housing Element policy B-I-4, update stormwater policies, address the need for community warning systems in new residential areas, modify the method residential density is calculated to address infill development. The background report included in the Council's agenda packet contains more details on these proposals.

Recommendation: Receive report and direct staff to start the public process of amending the General Plan.

10. Receive Report on Water Resources Protection Collaborative Efforts Among Santa Clara County, Cities, and the Santa Clara Valley Water District (Staff Contact: Mike McNeely 586-3301 and Tambri Heyden 586-3280)

Background: Staff and representatives from the Santa Clara Valley Water District will present a report on the status of the County-wide Water Resources Collaborative, which was formed in January 2003 after the Santa Clara Valley Water District proposed amendments to its Ordinance 83-2. These changes would have expanded the District's land use permitting authority, including increasing the District's jurisdiction adjacent to creeks from the existing 50' to 150'.

The Collaborative includes staff from all Cities in the County, the County itself, and the District, plus environmental, business, development, and property owner representatives. Key results thus far include:

- Adoption of a Memorandum of Consensus ratified by all Governing Bodies (Milpitas Council approval on September 16, 2003) which provided the framework for continued cooperation with the District.
- Improved coordination with District staff on land development issues.
- Development of draft guidelines and standards for all agencies to use for land development proposals near streams.
- Preliminary agreement that, in order to streamline the land development review process for work adjacent to creeks, some of the authority for the reviews would be transferred to the Cities and the County. The District would retain reviews of work within its creeks and right of way.

Some major issues which remain to be resolved include:

- Whether reviews of work on single-family lots of record can be streamlined or exempted.
- Whether local control and direction for land use reviews can be retained.
- Whether the entire process can be accommodated without substantial staff effort and costs. For instance, it may be necessary to map the top of bank of creeks in Milpitas to establish set blocks. This effort will be considered in the CIP preparation process with a possible District/ City cost sharing.

The guidelines and standards and other documents are expected to be finalized later this year and staff will present recommendations to Council at the appropriate time.

Recommendation: Note Receipt and File

11. Approve Concept Design for the Interpretive Historical Display for the O'Toole Elms (Staff Contact: Troy Fujimoto, 586-3287)

Background: To help mitigate the removal of the O'Toole Elm trees, KB Home is required to design and construct an interpretive historic display to be incorporated within the new elm grove. The applicant will be presenting three concept designs for the historical display to the Parks, Recreation, and Cultural Arts Commission (PRCRC) at their March meeting. Staff will present the PRCRC's recommendation at the Council meeting.

Concept A

This concept would include entry signs at Abel and Main Streets. Within the rows of elm trees would be three monuments encircled by cobblestone and a seat wall. The monument would have a concrete base replicating a tree trunk with an etched glass feature. The etching would include an image of an elm tree and the history of Milpitas.

Concept B

This concept would include entry signs at Abel and Main Streets. Within the rows of elm trees would be three monuments encircled by cobblestone and a seat wall. The monument would have a concrete base with imprinted tiles. In addition, a wood panel from the original Elm trees would include historical text and photos.

Concept C

This concept would include entry signs at Abel and Main Streets. Between each tree, there would be up lighting and a historical plaque. The up lighting would illuminate the entire row of trees.

Recommendation: Provide direction on the preferred concept.

*** 12. Approve Site and Architectural Approval Amendment No. SA2004-123 for Site Modifications at 1594 Pebble Beach Court (Staff Contact: Staci Pereira, 586-3278)**

Background: A number of structures have been constructed on the residential property located at 1594 Pebble Beach Court within Summit Pointe PUD without obtaining the necessary approvals and permits. Staff has been working with the applicant to bring these into conformance with both the zoning and building codes. This application, as conditioned, will bring the site into conformance with the hillside ordinance.

Staff proposes several conditions of approval that the applicant is in agreement with that relate to lighting levels and gazebo roof materials. The Planning Commission reviewed this project at their February 23, 2005 meeting and recommended approval to the City Council.

Recommendation: Approve Site and Architectural Approval Amendment No. SA2004-123 based on the findings and recommended special conditions enclosed in the Council's agenda packet.

- * 13. **Authorize the Mayor to Send a Letter to The Honorable Mike Honda Supporting Additional Funding for Berryessa Creek Project (Staff Contact: Mehdi Khaila, 586-3328)**

Background: The City of Milpitas has been working in partnership with the Santa Clara Valley Water District and the U.S. Army Corps of Engineers to enlarge Berryessa Creek to accommodate the 100-year stormwater. Once it is improved, a portion of Milpitas will no longer be subject to flooding during a major storm event. The Berryessa Creek improvement is divided into two sections. Santa Clara Valley Water District has a project to improve the northern portion from Lower Penitencia Creek to Calaveras Boulevard. The U.S. Corp of Engineers has a project to improve the southern portion from Calaveras Boulevard to Piedmont Road in San Jose. The northern portion is fully funded. However, on the southern portion, the Corps has informed us that unless they receive an additional appropriation of \$1.75 million this year, the project schedule would be delayed.

The Santa Clara Valley Water District has requested that the Council consider sending a letter to The Honorable Mike Honda in support of the additional funding appropriation so the project could continue without delay. Staff has prepared a letter to Representative Mike Honda for Council approval under the Mayor's signature. A copy of the draft letter is included the Council's agenda packet

Recommendation: Authorize the Mayor to send a letter on behalf of the City Council to The Honorable Mike Honda in support of requesting additional funding for the Berryessa Creek improvements.

- * 14. **Approval of the Interlocal Agreement Related to the 2005 Edward Byrne Justice Assistance Grant (JAG) Program Award (Staff Contact: Dennis Graham, 586-2502)**

Background: Since 1996, the City has annually received funds in varying amounts from the federal government via Local Law Enforcement Block Grants (LLEBG) to support law enforcement activities of the Milpitas Police Department. Effective 2005, grants are no longer issued under the LLEBG program, and its provisions have been folded into the Edward Byrne Memorial Justice Assistance Grant (JAG) program. Per the terms of JAG, Santa Clara County and eight cities (Campbell, Gilroy, Milpitas, Mountain View, Palo Alto, San Jose, Santa Clara and Sunnyvale) may make joint application for \$750,048 for FY 2005. Santa Clara County and the eight cities must submit a joint application for funds by completing a Memorandum of Understanding (MOU) designating which unit of government will act as the fiscal agent. Santa Clara County has been selected by representatives of the nine jurisdictions to act as fiscal agent for all, and per the terms of the JAG grant will be allotted 10% of the funds, or \$75,000, to cover administrative costs. If any of the nine agencies chooses not to collaborate then all nine listed jurisdictions lose the opportunity to receive funds. Representatives from the nine jurisdictions agreed to calculate each agency's distribution consistent with recent LLEBG disbursements; under this agreement, the City of Milpitas will be awarded approximately 2.54% of the remaining JAG funds, or \$17,153, available for 2005; no matching funds are required from the City. After the application for funds is accepted and approved, distribution of grant awards are expected to occur in October of 2005. JAG funds may be used for criminal justice law enforcement, prevention and education purposes including training, personnel, equipment and supplies. Upon receipt of the funds, the Police Department will bring to Council a plan outlining proposed expenditures, prior to any use of JAG funds.

Recommendation:

1. Approve the Memorandum Of Understanding entitled "Interlocal Agreement, Agreement Between Cities and the County of Santa Clara, 2005 Byrne Justice Assistance Grant (JAG) Program Award."
2. Authorize the City Manager to sign the Interlocal Agreement.

*** 15. Request for Captain Paul Inouye, Hazardous Materials Inspector, to Accept an Invitation from the Northern California Fire Prevention Officers Association for Paid Attendance to The Uniform Fire Code Association Annual Training Conference In Las Vegas Nevada (Staff Contact: Patti Joki, 586-3370)**

Captain Paul Inouye, Hazardous Materials Inspector for the Fire Department has received an invitation from the Uniform Fire Code Association to attend its annual training conference held in conjunction with the National Fire Protection Association's World Safety Conference and Exposition, June 4 – 7, 2005, in Las Vegas Nevada

The invitation includes costs for transportation, meals, attendance and registration. His time to attend is requested.

For the past two years, Captain Inouye has been a member of committees involved with providing technical code recommendations to the California State Fire Marshal's Office concerning adoption of the National Fire Protection Association standards to replace the Uniform Fire Code.

This conference provides the opportunity to vote on a number of technical code issues involving this adoption, as well as providing staff an excellent training opportunity. Staff has historically attended this training conference in past years.

Recommendation: Approve out of state travel request for Captain Paul Inouye to attend the Uniform Fire Code Association Annual Training Conference.

XIX. ORDINANCES

16. Adopt a Resolution Authorizing the Community Advisory Commission Chair to Appoint a Three-member Animal Regulation Appeal Board and Introduce Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I of the Milpitas Municipal Code to Provide that Notices of Appeal to the City Council Shall only be Effective Upon Timely Receipt of Payment of the Fee Adopted or Amended by Resolution of the City Council (Staff Contacts: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)

Background: The City's Animal Regulation Ordinance, adopted in 1995, provides the ability for violators to request a hearing conducted by the Animal Hearing Officer. As per the ordinance, decisions by the Officer, currently a staff member of the Housing Division, resulting from the administrative hearing can be appealed to an appeal board, made up of one or more persons, to be established by the City Council by resolution. Such an appeal board has never been formed and until recently, no one has inquired about appealing the Officer's decision. Thus, it is recommended that an appeal board be established prior to receiving a formal request for an appeal. The resolution included in the Council's agenda packet would authorize the Chair of the Community Advisory Commission to appoint a three-member appeal board for the purpose of hearing appeals from administrative hearings. Such members would serve two-year terms.

This issue has brought to light in an outdated section of the City's Municipal Code Standard Procedures Chapter 20 governing all types of appeals. By Resolution number 6449 dated July 18th, 1995, the City Council adopted a comprehensive master fee

schedule for all City fees and charges in order to recover the costs incurred by the City. This resolution raised the then-existing fee for appeals of administrative decisions to the City Council from \$25 to \$100. Section 5.05 of Chapter 20, however, still references the old fee of \$25, providing that a notice of appeal to the City Council shall not be effective unless a notice of appeal is filed and, where required, “said \$25 fee” paid within the time required. For the sake of internal consistency, the proposed ordinance would amend this section to provide that a notice of appeal requires payment of the fee adopted or amended by resolution of the City Council.

Recommendation:

1. Adopt the Resolution authorizing the Community Advisory Commission Chair to appoint a three-member Animal Regulation Ordinance Appeal board for the purpose of hearing appeals from related administrative hearings.
 2. Waive reading of Ordinance No. 54.24 beyond the title.
 3. Introduce Ordinance No. 54.24.
- * 17. **Adopt Ordinance No. 262.1 (1) repealing Chapter 310 of the Municipal Code; (2) repealing Chapter 320 of the Municipal Code; and (3) introducing Ordinance 262.1, Adding Chapter 310 to Title I of the Milpitas Municipal Code Establishing Regulations Governing Access to Public Meetings and Public Records, Designating City Employee Salary Information by Title as a Public Record, Regulating Lobbyists’ Activities and Solicitation of Donations by Public Officials and Establishing an Open Government Commission (“Milpitas Open Government Ordinance”) (Staff Contact: Steve Mattas, 586-3040)**

Background: The proposed ordinance presented by Vice-Mayor Gomez establishes procedures governing access to public meetings and public records. The proposed ordinance repeals Chapters 310 and 320 of the Municipal Code, and incorporates Chapter 320, designating city employee salary information by title as a public record, into a new Chapter 310, which shall be known as “The Milpitas Open Government Ordinance.” After publicly hearing the proposed ordinance at the Council’s February 15, 2005 meeting, the Council directed staff make minor changes, which are now included in the Ordinance. They included the following:

1. Incorporated the current Open Government ordinance’s language regarding City Councilmember, Mayor, Planning Commission members maintaining a “public officials’ calendar” and add “City Manager” to the list of persons required to maintain a “public officials’ calendar.”
2. Eliminated reference to supervisor of records for City Councilmembers. As an alternative, designated the Open Government Commission as the body a citizen or other public records requestor may petition for City Councilmember records or public information should their public records request remain unsatisfied. In addition, the City Manager’s “Weekly Report” is designated as a public record that must be disclosed under I-310-3.110.
3. Incorporated the current Open Government ordinance’s provisions related to review of Form 700 for all staff required to file a Form 700 by Municipal Code, Councilmembers, City Manager and Planning Commission. Added language that requires staff liaisons to review the Form 700s for members of their respective commissions.
4. Correct Section I-310-2.140(c), allowing speakers a “maximum” of three minutes during public comment on any item and during citizens’ forum. Limited Mayor and Councilmembers during the Councilmember announcement session of the agenda to the same amount of speaking time as members of the public during citizens’ forum.
5. Added Section I-310-2.190, opening one senior staff meeting per month open to the public. Such meeting shall be publicly noticed and made open to the public. It shall occur during business hours.

6. Added language to Section I-310-3.170, requiring training to Councilmembers for entering data into an automated public officials' calendar system.
7. Added additional time for the implementation of the public records index, from the current proposed timeline of 6 months to 12 months, due to the voluminous amount of records, and the need to coordinate staff time, technology, technology projects and procedures, and for the implementation of documents posted on department websites.

Recommendation:

1. Waive reading beyond the title for Ordinance No. 262.1.
2. Adopt Ordinance No. 262.1 (1) repealing chapter 310 of the Municipal Code; (2) repealing chapter 320 of the Municipal Code; and (3) adding Chapter 310 to Title I of the Milpitas Municipal Code establishing regulations governing access to public meetings and public records, designating city employee salary information by title as a public record, regulating lobbyists' activities and solicitation of donations by public officials and establishing an Open Government Commission ("Milpitas Open Government Ordinance").

XX. RESOLUTIONS

18. Adopt Resolution Amending the City of Milpitas Classification Plan (Staff Contact: Cherie Rosenquist, 586-3082)

Background: Amendments to the Classification Plan are periodically required to account for organization changes and equity adjustments to salary ranges and/or other related changes or conditions. At the request of the City Manager, a study on the salary range for the Economic Development Manager was conducted by the Human Resources Department. The study included a review of salaries with similar size cities and those within a close geographic range. Analysis of the cities surveyed showed similar responsibilities to the revised Milpitas Economic Development Manager job description (attached). The salaries for the surveyed cities ranged from \$111,000 to \$143,000. The current salary range for the Milpitas Economic Development Manager is \$86,675 - \$114,091. Staff's proposal also included a review of internal alignment with our own management staff. Most importantly, the revised salary should allow the City to attract qualified candidates to the meet our business needs and to be competitive with comparable neighboring cities.

The staff is also recommending that this classification be a part of the unrepresented, exempt senior management group. This action has already been reviewed and agreed upon with the appropriate bargaining unit pending Council's approval.

Recommendation:

1. Adopt a resolution amending the Classification Plan to modify the salary range for the Economic Development Manager to an annual salary range of \$107,942 - \$131,205 and be placed in the unrepresented, exempt senior management group.
2. Request approval of a budget appropriation of \$26,906 from the Redevelopment Agency Fund balance for fiscal year 2004-05.

*** 19. Adopt Resolution of Local Support for SB 680 (Staff Contact: Greg Armendariz, 586-3317)**

Background: Senator Joe Semitian is carrying a bill, sponsored by Silicon Valley Manufacturing Group, that would fund a number of modestly priced, high priority traffic congestion relief projects in Santa Clara County. This Traffic Relief bill will benefit commuters throughout Santa Clara County by funding important transportation improvements in all 15 cities and towns and the county. The criteria used to select

projects will include geographic equity, congestion relief, cost-effectiveness and identified county priority.

Revenue generated by a \$5 vehicle registration fee would be split in the following manner after DMV's administrative fee (estimated at approximately 1%) is deducted. Assuming the vehicle registration fee runs eight years and generates \$56 million, the funds would break down in the following manner:

- \$560,000 to DMV (approx. 1% of total revenues)
- \$4 million for Caltrain capacity improvements. These funds could be used for Santa Clara County's share of the cost of purchasing additional Baby Bullet train cars, or making station or parking improvements. All improvements must meet the nexus test and serve Santa Clara County.
- \$4 million for litter removal and landscape restoration (\$500,000 per year). This money can be used on highways or county expressways. The City of Milpitas will benefit with litter removal and landscape restoration on Highways 237, I880, and I680.

The remaining \$47.4 million would be divided into thirds:

1. \$15.8 million for county expressway improvements. This includes needed improvements on Montague Expressway in Milpitas.
2. \$15.8 million for street & road operational and ITS improvements --competitive pool. These funds would be available to cities/towns and the county for use on priority operational projects including small scale congestion relief projects, matching grants for larger projects, and signal timing/coordination projects.
3. \$15.8 million for direct distribution to cities/towns/county on a pro rata basis based on vehicle registrations and be available for the same uses outlined in the above two categories. The City of Milpitas would receive approximately \$600,000 for street improvements.

This item was reviewed by the Transportation Subcommittee and is recommended to the Council for approval.

Included in the Council packets is a frequently asked question and answer (FAQ) sheet providing additional information on the benefits of this proposed bill, to the City of Milpitas.

Recommendation: Adopt resolution of local support for SB 680 proposed by Senator Simitian.

- * 20. **Adopt Resolution Granting Initial Acceptance: Piedmont Road Bike Lane and Sidewalk Improvements at St. John's Cemetery, Project No. 4214, (Staff Contact: Doug De Vries, 586-3313)**

Background: This project provided roadway widening, sidewalks and landscaping along Piedmont Road and the City Council awarded the project to Grade Tech Incorporated on March 15, 2004. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$39,569.12.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$39,569.12.

- * 21. **Adopt Resolution Granting Initial Acceptance: 2004 Street Resurfacing Project, Project Nos. 4182/4223, (Staff Contact D. De Vries, 586-3313)**

Background: This project provided street patching, paving, slurry seal and striping, and the City Council awarded the project to C. F. Archibald Paving, Inc. on July 6, 2004. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$135,106.25.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$135,106.25.

XXI. BIDS AND CONTRACTS

- * 22. **Authorize the City Manager to Execute Agreement with Quint & Thimmig LLP for Legal Services related to the Formation of a Community Facilities District (Staff Contact: Emma Karlen, 586-3145)**

Background: At its January 18th meeting the City Council approved the Elmwood Residential Development Project and the Disposition and Development Agreement between the Milpitas Redevelopment Agency and KB Homes Southbay Inc (developer). As part of the Disposition and Development Agreement, the development of the site is subject to the establishment and annexation into a Community Facilities District (specifically, CFD No. 2005-1) for park maintenance and street landscape maintenance. The developer has indicated their readiness to proceed with the annexation into the CFD. Since time is of essence, the Finance Director requested a proposal from Quint & Thimmig LLC to provide legal services related to the formation of CFD 2005-1.

The principal of the firm, Paul Thimmig, has acted as legal counsel to many governmental agencies throughout the state in connection with the formation of community facilities district and is considered an expert in this area. The fees for this service will be \$20,000 inclusive of all expenses. Payment of the fees is entirely contingent upon the successful completion of the formation of the CFD. Staff has included a copy of the proposal for Council's reference. It is expected that the costs for the formation of the CFD will be reimbursed by future collection of the Special Taxes from the CFD.

Recommendation: Authorize the City Manager to execute agreement with Quint & Thimmig LLP for legal services related to the formation of a community facilities district, subject to approval as to form by the City attorney.

- * 23. **Authorize the City Manager to Execute Agreement Amendment; GSS Consulting; Various Capital Improvement Projects (Staff Contact: Mark Rogge, 586-3403)**

Background: GSS Consulting (GSS) is providing assistance on various capital improvement projects, including coordination with outside agencies, preparation and review of technical specifications and drawings, project management, grant administration, and construction technical support. Staff recommends that GSS perform continued project management and coordination services. The proposed services will support a number of capital projects as well as provide assistance on various Midtown projects. Staff has negotiated a fee for these services not to exceed \$119,600.00, which

is considered reasonable for the work. There are sufficient funds in the project budgets to cover this expense.

Recommendation: Authorize the Acting City Manager to execute an agreement amendment with GSS Consulting for services in the amount not to exceed \$119,600.00, subject to approval as to form by the City Attorney.

*** 24. Authorize City Manager to Execute Consultant Agreement; Hill Associates; Coyote Creek Trail, Reach 1, Project 4206 (Staff Contact: Greg Armendariz, 586-3401)**

Background: On February 1, 2005, the City Council awarded a construction contract for Coyote Creek Trail, Reach 1, Project 4206. On February 15, 2005, the City Council authorized acceptance of a grant funding increase, and execution of a contract change order to add trail entry amenities to the scope of work.

Hill Associates is the landscape architectural design consultant for Coyote Creek Trail, Reach 1. Design phase services have been completed. Staff recommends that Hill Associates be retained to provide support services during the construction phase of the project, including review of submittals and shop drawings, samples, mockups, sitework, and amenities installation. The recommended scope also includes placard design for trail entry signs. An agreement with Hill Associates is proposed for these services. Staff has negotiated a scope and fee for these services not to exceed \$23,645.00, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this expense.

Recommendation: Authorize the Interim City Manager to execute an agreement with Hill Associates for consulting services for Coyote Creek Trail, Reach 1, Project 4206, in the amount of \$23,645.00, subject to approval as to form by the City Attorney.

*** 25. Authorize a Contract with Ashron Construction & Restoration, Inc. to Perform Grout Injection on the Mechanic's Pit at Fire Station No. 1 (Staff Contact: Chris Schroeder, 586-3161)**

Background: The mechanic's pit at Fire Station #1 has had a problem with ground water intrusion since it was constructed in 2000. The City of Milpitas recently received a settlement from the building designers that provided us the funding to resolve this issue. Purchasing sent out a bid to 10 contractors on the City's registered vendors list to find a company that could pressure inject grout into and/or behind the cinder block walls in the mechanics pit to stop the intrusion of the ground water; five (5) bidders responded. In evaluating the bids staff considered not only the base bid, but also the warranty period and the guarantee cost to determine the offer most advantageous to the City, therefore the contract award is based on a combination of all three factors. The lowest responsive bidder gave us a written seven (7) year warranty, that if they do not stop the leak, they will refund the full contract amount less one (1) dollar, and a \$688.00 discount if paid in fifteen (15) days from acceptance and presentation of an invoice. The following is a recap of bids received:

		<u>Warranty</u>	<u>Guarantee*</u>
Watertight Restoration, Inc.	Disqualified		
Alpha Restoration & Waterproofing	\$29,350.00	1 yr.	\$3,000.00
Ashron Construction and Restoration, Inc.	\$27,525.00	7 yrs.	\$1.00
The Pressure Grout Company	\$22,150.00	1 yr.	\$18,000.00
Rainbow Waterproofing & Restoration co.	\$19,301.00	1 yr.	\$19,301.00
(*Cost to the City if the contractor is unable to stop the leakage during the Warranty period.)			

There are sufficient funds available in Capital Project 8135 for the purchase of the grout injection service.

Recommendation:

1. Reject the bid from Rainbow Waterproofing and Restoration (\$19,301.00).
2. Reject the bid from The Pressure Grout Company (\$22,150.00).
3. Authorize the City Manager to execute a contract with Ashron Construction & Restoration, Inc. to perform the grout injection service in the amount of \$27,525.00 including tax, subject to approval as to form by the City Attorney.

*** 26. Approve Agreement Amendment With Krost & Associates (Staff Contact: Carmen Valdez, 586-3086)**

Background: On June 1, 2004 the City Council approved a contract with Mary Krost and Associates to provide safety training to City of Milpitas employees. The training for 80 plus employees includes six seminars and customized video demonstrations. To date the remaining balance on PO 3375 is \$5,173. To complete the contract an additional \$1,500 is needed due to unexpected costs for additional classes and videotaping for Public Works, Fire and Police employees. Funds for this service are available in the Human Resources Department operating budget.

Recommendation: Approve the amendment to the agreement with Mary Krost & Associates, subject to approval as to form by the City Attorney, and authorize the expenditure in the amount not to exceed \$19,779.00.

*** 27. Approve Contract Change Order: Singley Area Street Rehabilitation, Phase III, Project No. 4200; Street Resurfacing, Project No. 4182 (Hamilton Area); Marylinn Drive sidewalk, Project No. 4222; and Sports Center Master Plan Improvement, Phase I, Project No. 8149 (Alley Way), (Staff Contact: Doug De Vries, 586-3313)**

Background: The City Council awarded this project to Fanfa, Inc. on May 2004, and the punch list items are being completed. The completed project will provide improved drainage, and new pavement sections for various City streets. The project will provide improvements at various locations in the Singley Drive neighborhood. More specifically, the project involves reconstruction of sections of pavement, sidewalks, and curb and gutter in areas along Donahe Drive, Hamilton Avenue, Dundee Avenue, Parvin/Via Baja, and Sark, Perth, De Anza, Alisal Del Vaile, Fulton Courts.

Other improvements include the reconstruction of the alley way between Milpitas Sports Center and North Park Victoria Drive to provide a second exit for vehicles from the Sports Center during major events. Also included is the construction of a missing section of sidewalk providing a continuous sidewalk along Marylinn Drive west of Railroad Avenue. A TDA grant was obtained for the sidewalk work.

During construction of the project unstable subsurface soil conditions were encountered at some locations and immediate action was needed to remedy the problem. In other areas where the cross slope of the road had decreased the limits of work were extended in order to obtain positive drainage. Staff directed the contractor to proceed with the work by extending the quantities of excavation, aggregate base materials, PCC pavement, AC pavement and tie-ins, reinforcing fabrics, and utility adjustments. In addition the number of pavement markers was doubled as requested by Street Maintenance to conform to the new striping requirements.

Final quantities for the bid items have been received. A change order is recommended in the amount of \$111,342.91 to reflect the actual quantities installed in the field. Sufficient funds are available from Project No. 4182.

Recommendation: Authorize the City Engineer to execute the Balancing Contract Change Order for Fanfa, Inc. in an amount not to exceed \$111,342.91

- * 28. **Approve Change Order: South Bay Water Recycling Program (SBWRP) Infill Phase M-2, M-3 (Project No. 6093) Staff Contact: Doug De Vries 586-3313)**

Background: This project was awarded for construction by the City Council on November 20, 2001, for a total of \$3.53 million. This work is funded entirely by SBWRP. The work includes installation of recycled water mains in several areas of the city. The construction extended the recycled water main south on Comet Drive to Great Mall Circle. Comet Drive is a private street with a specialty concrete surface. The contractor's costs have now been reviewed and approved by staff. The proposed total cost of the change order for the additional work required for the street reconstruction is \$19,828.48. Sufficient funds are available in the project budget.

Recommendation: Authorize City Engineer to execute a change order in the amount of \$19,828.48 to Preston Pipelines.

- * 29. **Award Bid for Purchase of Ammunition (Staff Contact: Chris Schroeder, 586-3161)**

Background: Staff requested bids from six distributors and dealers for Federal and Winchester ammunition for the Police Department. Bidders were asked to bid on the specific items of both brands and were informed that the City reserved the right to split the bid between more than one bidder if it proved to be advantageous for the City. Four responded; two submitted partial bids on both brands but were not the lowest bidders for that particular brand. Staff recommends that the bid be awarded to the lowest bidders of each brand of ammunition. The following is the recap of bids received by brand which includes freight but not tax:

	<u>Federal Ammunition</u>	<u>Winchester Ammunition</u>
San Diego Police Equipment Co	\$16,526.15	\$0.00
Adamson Industries	incomplete	\$8,930.63
J & G Sales, Ltd	\$23,959.16	no bid
L. C. Action Police Supply	incomplete	incorrect

There are sufficient funds in the Police Department operating budget for these purchases.

Recommendation: Award the bid for the Federal ammunition to San Diego Police Equipment Co. in the amount of \$16,526.15 and for the Winchester ammunition to Adamson Industries in the amount of \$8,930.63.

- * 30. **Award Bid for Aquatic Eco Systems Aeration System (Staff Contact: Jeff Leung, 586-3326)**

Background: Staff solicited informal bids from three vendors to furnish and install an Aquatic Eco System aeration and diffuser system in the Hall Park lagoon at Abbott Ave. and LaHonda Dr. The following is the recap of bids received:

<u>Bidder</u>	<u>Amount</u>
American Civil Constructors	\$12,500.00
McNabb Construction	\$9,116.28
North Bay Ponds and Water	\$8,925.14

There are sufficient funds available in the Hall Park Walk Way Project (CP5058) for this purchase.

Recommendation: Award the bid for the purchase and installation of an Aquatic Eco Systems Aeration system No. GL96-230 to North Bay Ponds and Water, and authorize the City Manager to execute a contract with North Bay Ponds and Water in the amount of \$8,925.14, subject to approval as to form by the City Attorney.

XXII. CLAIMS AND DEMANDS

*** 31. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,231.72 to VMI, Inc. for a 40" LCD Mitsubishi Monitor. The monitor is used to support the 911 dispatch center as part of the GIS map display system used to dispatch fire and police emergency calls. (Funds are available for this purchase from CIP project 3389 "Public Safety Technology").
2. \$5,585.00 to Medtronic Physio-Control Corporation for a one year technical service and support agreement for the seven (7) LIFEPAK 500 automatic defibrillators and five (5) LIFEPAK 12 manual defibrillators currently in use by the Fire Department. (Funds are available for this purchase from the Fire Department operation budget).
3. \$74,793.98 to Advanced Traffic Products for the purchase of fifty-five (55) 3M Opticom – 2 Channel Phase Selector Cards for emergency vehicle traffic signal control. The City of Milpitas was one of the first cities in the Bay Area to install 3M brand Opticom traffic signal preemption controls. The equipment allows a police or fire emergency vehicle to temporarily disrupt traffic signal operations by forcing the traffic signal to turn green for the direction of the approaching emergency vehicle thus reducing the response time to incidents. The Opticom system is installed on every police and fire vehicle as well as every City maintained traffic signal. The original control cards deployed 15 years ago need to be upgraded to provide encrypted signal capabilities that prohibit a non-emergency response vehicle from preempting the traffic signals.

As the City's mutual aid partners have already purchased the newer Opticom technology, the upgrade will allow the City to remain compatible and be able to render and receive mutual aids. Advanced Traffic Products is the sole authorized 3M distributor of this product in seven (7) western states including California. This type of sole source purchase is authorized by Municipal Code section I-2-5.03-4. (Funds are available for this purchase from CIP project 8166 "Traffic Signal Preemption System" and CIP project 4167 "Traffic Signal Modifications").

Recommendation: Approve the purchase requests.

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, APRIL 5, 2005, AT 7:00 P.M.**